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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TERESA CABRAL,

Plaintiff(s),

v.

CAPITOL MANAGEMENT
SERVICES, L.P.,

Defendant(s).

2:12-CV-1422 JCM (VCF)

ORDER

Presently before the court is the matter of *Cabral v. Capitol Management Services*, case no. 2:12-cv-1422-JCM-VCF.

I. Background

This matter arises out of an alleged violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”). Plaintiff alleges that defendant Capitol Management Services contacted her by U.S. mail regarding an alleged past due consumer debt, but failed to include required disclosures, in violation of the FDCPA. (Compl., doc. # 1).

On September 6, 2012, plaintiff filed a summons return executed with the court. (Doc. # 5). The defendant did not file an answer or otherwise respond by the deadline in which to do so. Plaintiff filed for entry of clerk’s default, which the clerk entered. (Doc. ## 7, 8). The court then ordered the plaintiff to submit a proposed judgment with a supplement explaining any damage award to which she believed she was entitled. (Doc. # 10).

1 In response, plaintiff filed the instant motion (doc. # 11) calculating her damages as follows:
 2 actual damages in the amount of \$2,500.00, statutory damages in the amount of \$1,000.00, costs in
 3 the amount of \$393.00, and attorney fees in the amount of \$875.00, for a total of \$4,768.00. (*Id.* at
 4 6).

5 **II. Discussion**

6 The FDCPA permits a plaintiff to recover actual damages, 15 U.S.C. § 1692(k)(a)(1),
 7 statutory damages in an amount determined by the court up to \$1,000.00, 15 U.S.C. § 1692(k)(2)(A),
 8 and attorneys fees and costs, 15 U.S.C. § 1692(k)(3).

9 With respect to actual damages, plaintiff asserts simply that “[they] are limited, as those
 10 damages are based on frustration and confusion resulting from Defendant’s failure to properly notify
 11 her of her statutory rights” as the sole justification for her request of \$2,500.00. (*Id.* at 4). This is
 12 despite the fact that this court’s prior order (doc. # 10) specifically stated: “Plaintiff’s motion for
 13 default judgment states that plaintiff has suffered \$2,500 of actual damages. However, from the
 14 court’s review of the docket, this sum is not corroborated by any evidence” before instructing her
 15 to file a supplement containing such evidence. (*Id.* at n. 1). The court notes that counsel cited case
 16 law only in support of his request for costs and attorney fees under the statute; the requests for actual
 17 damages and statutory damages are devoid of supporting authority or meaningful argument.

18 Under the FDCPA, actual damages can include damages for emotional distress caused by
 19 abusive debt collection practices. *See, e.g., Baker v. G. C. Services Corp.*, 677 F.2d 775, 780 (9th
 20 Cir. 1982)(“actual damages that a plaintiff would be likely to incur would be for emotional distress
 21 caused by abusive debt collection practices...”). “However, how to interpret the ‘actual damage’
 22 language with respect to emotional distress is a controversial issue that has not yet been addressed
 23 by the Ninth Circuit.” *Valero v. Bryant, LaFayette and Associates*, 2011 WL 1438436 at *3 (E.D.
 24 Cal. April 14, 2011)(citing *Bolton v. Pentagroup Financial Services, LLC*, 2009 WL 734038 at *10-
 25 11 (E.D. Cal. Mar. 17, 2009)). Courts in this circuit have issued conflicting decisions regarding
 26 whether a plaintiff is required to prove actual damages under the FDCPA by showing he has suffered
 27 intentional infliction of emotional distress (“IIED”) as defined by state tort law, or simply by
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1 proffering evidence that he suffered symptoms from distress without satisfying all elements of the
 2 tort. *See, e.g., Riley v. Giguere*, 631 F.Supp.2d 1295 (E.D. Cal. 2009)(holding actual damages
 3 available for emotional distress under the FDCPA upon plaintiff’s showing of actually suffering
 4 symptoms of distress); *Panahiasl v. Gurney*, 2007 WL 738642 (N.D. Cal. Mar. 8, 2007) (tort
 5 elements need not be proven so long as plaintiff has tendered evidence substantiating he suffered
 6 emotional distress as a result of FDCPA violation); *but see Costa v. Nat’l Action Fin. Servs.*, 2007
 7 WL 4526510 (E.D. Cal. Dec. 19, 2007)(plaintiff must prove the elements of a claim for emotional
 8 distress under state tort law to recover for emotional distress under FDCPA).

9 Plaintiff cites no case law, whether from this district or any other, supporting her bare
 10 assertion that she is entitled to actual damages for emotional distress under the FDCPA either with
 11 or without proving the elements of the tort of IIED under Nevada law.

12 Although this issue in the context of the FDCPA is yet to be addressed by the Ninth Circuit,
 13 that court has, however, held that “actual damages” under the Fair Credit Reporting Act (“FCRA”),
 14 which is similar to the FDCPA, do require a showing that the plaintiff actually suffered symptoms
 15 of emotional distress. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995).
 16 Relying on *Guimond*, other courts in this circuit have analogized the FDCPA to the FCRA in
 17 justifying awards for actual damages under the FDCPA based on emotional distress. *See, e.g.,*
 18 *Panahiasl*, 2007 WL 738642 at *2 (“Under the FCRA, a statutory scheme very similar to the
 19 FDCPA, a plaintiff who proves a violation of the act is entitled to actual damages for emotional
 20 distress arising from the violation, without first having to prove a right of action under state law.”).
 21 “Applying this rationale, [some] courts [have held] that when a violation of the FDCPA has been
 22 established, actual damages for emotional distress can be proven independently of state law
 23 requirements...” *Costa*, 634 F.Supp.2d at 1078 (citing *Panahiasl*, 2007 WL 738642 at *2).
 24 “However, a plaintiff must demonstrate more than transitory symptoms of emotional distress and
 25 unsupported self-serving testimony by a plaintiff is not sufficient.” *Costa*, 634 F.Supp.2d at 1078
 26 (citing *Wantz v. Experian Info. Solutions*, 386 F.3d 829, 834 (7th Cir. 2004); *Cousin v. Trans Union*
 27 *Corp.*, 246 F.3d 359, 371 (5th Cir. 2001)).
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1 Even under this more lenient standard, should this court apply it to the recovery for actual
2 damages under the FDCPA, plaintiff has failed to show she is entitled to such relief. Plaintiff has
3 only broadly asserted that she was “frustrated” and “confused” as a result of “defendant’s failure to
4 properly notify her of her statutory rights.” (Doc. # 11 at 4). She has not bothered to detail how she
5 actually suffered and has not described what her symptoms were. In summary, the court need not
6 adopt either test, because plaintiff fails under both. She has not demonstrated that she suffered actual
7 damages, and the court declines to award her any.

8 Next, plaintiff makes a request for the maximum additional damages permitted by statute in
9 the amount of \$1,000.00. (*Id.*); *See* 15 U.S.C. 1692(k)(2)(A). Plaintiff simply points to the
10 defendant’s failure to respond in this matter as the sole justification for her request. (*Id.*). When
11 determining the additional amount of damages available under 15 U.S.C. 1692(k)(2)(A), the court
12 is required to consider, among other relevant factors, “the frequency and persistence of
13 noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such
14 noncompliance was intentional.” *See* 15 U.S.C. 1692(k)(b)(1). As the defendant has not responded,
15 the court must rely on averments contained in the complaint to assess the amount of additional
16 statutory damages plaintiff may be entitled to.

17 In her complaint, plaintiff alleges only that the “defendant contacted plaintiff by mail in an
18 attempt to collect an alleged consumer debt from plaintiff. However, defendant did not provide
19 plaintiff with a timely validation of debts disclosure as required by the FDCPA.” (Compl., doc. #
20 1, ¶ 10). Despite providing plaintiff with the opportunity to supplement her damages request,
21 plaintiff has not detailed the “frequency” or “persistence” of the violation(s). *See* 15 U.S.C. §
22 1692(k)(b)(1). In addition, the court cannot determine whether the noncompliance was intentional
23 as neither party has produced any evidence on this point.

24 Upon review of the complaint and motion for default, it appears that plaintiff received only
25 a single letter from the defendant, and that sole event serves as the basis for the violation. The court
26 finds that the conduct was not frequent or persistent, and the nature of the noncompliance (i.e., in
27 the form of a letter) was relatively harmless in comparison to, for example, harassing phone calls or
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1 personal visits. The court declines to grant the maximum statutory award requested, and will instead
2 award \$100.00.

3 With respect to the remaining damages, plaintiff has provided an adequate breakdown of the
4 costs and fees associated with this action. Utilizing the lodestar method, the court finds that costs
5 in the amount of \$393.00 and attorney fees in the amount of \$875.00 are reasonable.

6 **III. Conclusion**

7 The court enters default in favor of the plaintiff and awards the following damages: \$0.00
8 in actual damages, \$100.00 in discretionary statutory damages, \$393.00 in costs, and \$875.00 in fees
9 for a total of \$1,368.00.

10 Accordingly,

11 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion for default
12 (doc. # 11) be, and the same hereby is, GRANTED IN PART and DENIED IN PART, consistent
13 with the foregoing.

14 IT IS FURTHER ORDERED that the clerk of the court shall enter default judgment in favor
15 of the plaintiff and against defendant Capitol Management Services in the total amount of \$1,368.00
16 and close the case.

17 DATED January 22, 2014.

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20 UNITED STATES DISTRICT JUDGE